

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MAY 1999 SESSION

FILED

September 24, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

WILLIAM GARRETT,

Appellant,

vs.

STATE OF TENNESSEE,

Appellee.

* C.C.A. 01C01-9810-CR-00431
* SUMNER COUNTY
* Hon. Jane W. Wheatcraft, Judge
* (Petition for Post-Conviction Relief)
*

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OPINION FILED: _____

AFFIRMED

NORMA MCGEE OGLE, JUDGE

OPINION

The petitioner, William Garrett,¹ appeals the summary dismissal of his petition for post-conviction relief by the Criminal Court of Sumner County on October 13, 1998. According to the petition for post-conviction relief, the petitioner was convicted in the Criminal Court of Sumner County on May 24, 1994, pursuant to a plea of guilt and received a sentence of twelve years incarceration in the Tennessee Department of Correction.² He did not appeal his conviction until October 1, 1998, when he filed the instant petition for post-conviction relief. In his petition, the petitioner claimed that the State had violated the terms of his plea agreement and the petitioner was entitled to release from the Department pursuant to the original agreement. Alternatively, the petitioner challenged the knowing and voluntary nature of his plea, the trial court's compliance with Tenn. R. Crim. P. 11, and the performance of his trial counsel. The post-conviction court dismissed the instant petition due to the expiration of the applicable statute of limitations. Tenn. Code. Ann. § 40-30-202(a) (1997). On appeal, the petitioner presents the following issues for our review:

1. Whether the trial court was required to conduct a hearing and make findings pursuant to Burford v. State, 845 S.W.2d 204 (Tenn. 1995), and Sands v. State, 903 S.W.2d 297 (Tenn. 1995); and
2. Whether the statute of limitations set forth in Tenn. Code. Ann. § 40-30-202 violates due process and equal protection provisions of the state and federal constitutions.

Following a thorough review of the record, we affirm the judgment of the trial court.

¹The petitioner styled and signed his petition with the name "William Garrett." Apparently, he has also previously used the alias "William Herbert Stevenson."

²The record does not reflect the crime of which the petitioner was convicted, as the petitioner has not included the record of the trial proceedings in the record before this court.

The post-conviction court was obligated to review the petition for post-conviction relief and dismiss it without a hearing or the appointment of counsel if it plainly appeared that the petition was not filed within the statute of limitations. Tenn. Code. Ann. § 40-30-206(b) (1997). At the time the petitioner's conviction became final in 1994, the statute of limitations applicable to post-conviction proceedings was three years. Tenn. Code. Ann. 40-30-102 (Repealed 1995). However, in 1995, the legislature enacted the Post-Conviction Procedure Act, which governs all petitions filed after May 10, 1995, including the instant petition. The 1995 Act reduced the statute of limitations from three years to one year, but provided a one year grace period, commencing on the effective date of the Act, for those petitioners whose three year limitations period had not yet expired. Tenn. Code. Ann. § 40-30-201 (1995), Compiler's Notes; Tenn. Code. Ann. § 40-30-202(a). Accordingly, the petitioner had until May 10, 1996, to file a petition for post-conviction relief. Instead, the petitioner filed his petition more than two years after the grace period had expired.

Nevertheless, citing Burford, 845 S.W.2d at 204, and Sands, 903 S.W.2d at 297, the petitioner asserts that his claim is "later-arising," precluding strict application of the limitations period. The petitioner argued in his petition that, prior to pleading guilty, he was "specifically advised and/or otherwise was of the state of mind that in return for his guilty plea he would serve 30 % of a twelve year sentence . . . and that he would not have to undergo a parole hearing to obtain release." He further alleged that he was only advised of the necessity of a parole hearing "after serving some 36 Months of imprisonment." Thus, according to the petitioner, he could not have asserted this claim before serving thirty-six months of his sentence in the Department. Yet, even assuming the applicability of Burford, 845 S.W.2d at

204, and Sands, 903 S.W.2d at 297, in this case,³ we note that more than one year passed between the time of this alleged discovery and the filing of the instant petition. Accordingly, the petitioner's contention must fail.⁴

As to the petitioner's challenge to the constitutionality of the one year statute of limitations set forth in Tenn. Code. Ann. § 40-30-202, this court has previously held that the limitations period is consistent with principles of due process. Carothers v. State, 980 S.W.2d 215, 217-218 (Tenn. Crim. App. 1997); Holston v. State, No. 02C01-9609-CR-00298, 1997 WL 421212, **2-3 (Tenn. Crim. App. at Jackson, July 28, 1997). Similarly, we conclude that the limitations period does not violate the petitioner's right to equal protection of the laws.

On appeal, the petitioner argues that "the major time difference between [statutes of limitations applicable to] certain civil litigants and [the statute applicable to] a criminal defendant involved in post-conviction [proceedings]" violates the equal protection provisions of the Fourteenth Amendment to the United States Constitution and Article I, Section 8 of the Tennessee Constitution. Both the United States and Tennessee constitutions guarantee to citizens the same basic right to equal protection of the laws. Brown v. Campbell County Board of Education, 915 S.W.2d 407, 412-413 (Tenn. 1995); State v. Crain, 972 S.W.2d 13, 15 (Tenn. Crim. App. 1998). See also Evan v. Steelman, 970 S.W.2d 431, 435 (Tenn. 1998)("[t]his court has traditionally utilized the framework developed by the United States Supreme Court for analyzing equal protection claims"). Essentially, both the state and federal constitutions require that all persons similarly situated be treated

³In Seals v. State, No. 03C01-9802-CC-00050, 1999 WL 2833, at *2 (Tenn. Crim. App. at Knoxville, January 6, 1999), this court observed that the "anti-tolling" provision of the 1995 Act has no operation against constitutional principles.

⁴Additionally, the petitioner's claim does not fit into any of the statutory categories for untimely consideration. Tenn. Code. Ann. § 40-30-202 (b).

alike. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439, 105 S.Ct. 3249, 3254 (1985). In other words, “things which are different in fact or opinion are not required by either constitution to be treated the same.” Doe v. Norris, 751 S.W.2d 834, 841 (Tenn. 1988). Thus, a legislative classification which does not affect fundamental rights nor proceed along suspect lines will be accorded “a strong presumption of validity” and will be sustained “if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.” Heller v. Doe, 509 U.S. 312, 319-320, 113 S.Ct. 2637, 2642 (1993). See also Evans, 970 S.W.2d at 435; State v. Robinson, No. 01C01-9612-CC-00536, 1999 WL 16802, at *2 (Tenn. Crim. App. at Nashville), perm. to appeal granted, (Tenn. 1999).

The challenged statute of limitations implicates neither a fundamental right nor a suspect class. The opportunity to collaterally attack constitutional violations occurring during the conviction process is not a fundamental right. Burford, 845 S.W.2d at 207; Carothers, 980 S.W.2d at 217. Additionally, prisoners are not a suspect class. See, e.g., Benjamin v. Jacobson, 172 F.3d 144, 165 (2nd Cir. 1999); Carson v. Johnson, 112 F.3d 818, 821-822 (5th Cir. 1997); Wilson v. Yaklich, 148 F.3d 596, 604 (6th Cir. 1998), cert. denied, ___ U.S. ___, 119 S.Ct. 1028 (1999); United States v. Vahovick, 160 F.3d 395, 398 (7th Cir. 1998); Murray v. Dosal, 150 F.3d 814, 818 (8th Cir. 1998), cert. denied, ___ U.S. ___, 119 S.Ct. 1467 (1999); Mayner v. Callahan, 873 F.2d 1300, 1302 (9th Cir. 1989). Accordingly, the burden is upon the petitioner to negate every conceivable basis which might support the legislation, “whether or not the basis has a foundation in the record.” Heller, 509 U.S. at 320-321, 113 S.Ct. at 2643. The petitioner has not carried this burden.

As noted by our supreme court, the legislature enacted the challenged

statute to address the particular problem of the “interminable duration of criminal appeals.” Carter, 952 S.W.2d at 419. Clearly this purpose is rationally related to the distinction made by the legislature between some civil litigants and petitioners in post-conviction proceedings. This issue is without merit.

For the foregoing reasons, we affirm the judgment of the post-conviction court.

Norma McGee Ogle, Judge

CONCUR:

David G. Hayes, Judge

Jerry L. Smith, Judge